S.B.Civil Misc.Appeal No.150-93
The State of Raj. vs. Jagdish Singh Gehlot

Date of Order: 28.7.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. Narendra Moolchandani for the appellant.
Mr. D.R.Lunkar for the respondent.

Heard learned counsel for the parties.

The present appeal is against the order passed by the learned Addl. District Judge No.1, Jodhpur on objection filed by the appellant-State under Section 30 of the Arbitration Act, 1940, by which the learned Addl. District Judge No.1, Jodhpur rejected the objection of the State against the award dated 30.8.1991 passed in favour of the respondent.

Brief facts of the case are that the respondent Jagdish Singh submitted a petition under Section 8 of the Arbitration Act, 1940 with the allegations that he was awarded work contract by the Public Works Department of the Govt. of Rajasthan. He was to construct power house in pursuance of the said contract. According to the contractor, he completed his entire job work within time. The claimant claimed that the amount of the item mentioned in para-5, amounting to Rs.1,41.324.75 have not been paid to the claimant by the State. The claimant also claimed interest of Rs.99,633.15. In total the claimant's claim was Rs.2,40,958.90. The claimant also claimed interest @ 18% per

annum from the date of notice dated 28.10.1987. The claimant-contractor submitted that he served a notice upon the State for appointing arbitrator on 24.10.1987 through his advocate, but the appellant State did not appoint any arbitrator in terms of the contract. The claimant-contractor, therefore, prayed for appointment of arbitrator.

The State submitted reply to the application under Section 8 of the Arbitration Act, 1940 and admitted that the work contract was given to the respondent-contractor. The appellant-State also admitted that the contractor completed the work well before time for completion of the work but disputed the claim of the claimant on factual basis only. The objection was taken by the State that the claim of the claimant is barred by time. It is further submitted that as per the condition no.23 of the contract, only the Chief Engineer of the department can give final decision in respect of the dispute between the contractor and the department. It is submitted that the Chief Engineer has not been served with any notice nor he has been impleaded as party in the proceedings under Section 8 of the Act of 1940. It is submitted that other person cannot be appointed as arbitrator except the Chief Engineer, P.W.D. It is submitted that in condition no.23, the contract for arbitration, the Chief Engineer is to decide the dispute and the condition no.23 nowhere provides for referring the matter to the arbitrator. Therefore, the

petition is not maintainable for appointing of the arbitrator.

The learned Addl. District Judge No.1 by order dated 30.8.1989, appointed Manak Lal Chauhan,Advocate(Ex.Judl.Officer) as arbitrator. The order of the trial court dated 30.8.1989 was challenged by the State by preferring Revision Petition No.651/89 wherein the State submitted that the court below had no jurisdiction to appoint arbitrator and if it is held that the arbitrator could have been appointed then only the Chief Engineer, P.W.D. should have been appointed as arbitrator. This Court dismissed the revision petition holding that the court below had jurisdiction to appoint the arbitrator and since the department failed to refer the matter to the Chief Engineer, in response to the dispute raised by the contractor, therefore, the court rightly appointed the arbitrator of court's choice.

The learned arbitrator, thereafter, proceeded with arbitraion proceedings. The record of the arbitration proceedings was also summoned by this Court. When award was submitted in court for making it rule of the court, the State submitted objection under Section 30 of the Arbitration Act, 1940, which was rejected by the court below by impugned order dated 18.1.1993.

According to the learned counsel for the State, the dispute was raised after delay and the claim of the contractor became barred by time. It is submitted that the Chief Engineer alone could have been

appointed as arbitrator by the court below. Since the court committed error of law in appointing arbitrator, therefore, the award is illegal and nullity. It is submitted that the learned arbitrator did not give opportunity to the appellant-State to produce evidence and even did not frame issues, therefore, the case of the State was prejudiced. It is also submitted that the arbitrator did not allow the cross-examination of the deponent who submitted affidavit. It is also submitted that the learned arbitrator has not given any reason for passing the award. Therefore, the award is non-speaking.

I considered the submissions of the learned counsel for the parties and perused the record also.

At the out set, it may be said that there is no allegation against the arbitrator so far as the malafides are concerned, malafides in law or malafides in fact, nor there is allegation that the award has been improperly procured or is otherwise invalid. So far as the question of bar of limitation against the claim of the contract is concerned, that was the issue specifically raised by the appellant-State before the civil court in the proceedings under Section 8 of the Arbitration Act. The question of jurisdiction of civil court was also raised about appointing arbitrator. It is also urged by the appellant-State that in view of condition no.23 of the agreement, only the Chief Engineer could have been appointed as arbitrator. All these issues have been decided by the High Court in

earlier round of litigation when the State preferred revision petition and all those objections were rejected by this Court by order dated 25.8.1998. In this appeal, again it has been alleged that the court below has committed error of law in appointing the arbitrator as well as the objection has been raised that only the Chief Engineer could have been appointed as arbitrator. These arguments are now not available to the appellant-State in view of the order passed by this Court in the earlier round of litigation and otherwise also, there is no merit in the submissions of the learned counsel for the appellant. It is clear from the facts mentioned above that the contractor served notice upon the State for appointing the arbitrator but they failed to appoint the arbitrator. He submitted petition for appointing arbitrator, upon which the arbitrator was appointed. So far as the contention of the State that the contractor took full and final payment of the bill is concerned, the appellant failed to produce any evidence in support of said contention that the contractor received the amount in full and final satisfaction.

The rest are the objections about the question of fact and the State submitted that the claimant could not have been awarded amount against the extra lead work etc. Those objections have been considered by the civil court in detail and have been rejected. It is true that the arbitrator has not passed the reasoned award but it appears from the various order-sheets in the arbitral proceedings that the arbitrator gave

full opportunity to the appellant to produce evidence and heard the arguments and thereafter decided the claim of the parties. It is not necessary that the arbitrator should record any reason for passing the award.

The learned counsel for the respondent submitted that the arbitrator as well as the court below committed error of law in not awarding the interest amount despite the fact that the contractor claimed interest before the arbitrator. After going through the facts of the case, it appears that when the arbitrator did not award the interest, the contractor-respondent did not claim interest when the award was made rule of the court. As per the order, it nowhere comes out that the respondent-contractor prayed before the civil court for awarding interest. Since the interest has not been awarded by the arbitrator nor by the civil court in a matter relating to the claim of more than 23 years ago, I do not find any reason to award interest now. Therefore, the prayer for interest is rejected.

In view of the above, I do not find any merit in this appeal and the same is hereby dismissed.

(**PRAKASH TATIA),J.**

mlt.